

Amendment No. 1 to SB2203

Crowe
Signature of Sponsor

AMEND Senate Bill No. 2203

House Bill No. 1925*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, Part 6, is amended by adding the following as a new section:

(a) As used in this section:

(1) "In need of assisted outpatient mental health treatment" means that a person, as a result of a mental illness:

(A) Has been committed by a court to detention for involuntary mental health treatment under this chapter at least twice during the preceding thirty-six (36) months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty-six (36) months preceding the date of initial detention of the current commitment cycle; provided, that time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty-six-month calculation;

(B) Is unlikely to voluntarily participate in outpatient treatment with an order for less restrictive alternative treatment, in view of the person's treatment history or current behavior;

(C) Is unlikely to survive safely in the community without supervision;

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(D) Is likely to benefit from less restrictive alternative treatment;

and

(E) Requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time; and

(2) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting that includes the services described in this section.

(b) In addition to any authorized action under § 33-6-502, a court of competent jurisdiction, including a mental health court, may order a proposed patient who has threatened violence against the patient's self or other persons to receive assisted outpatient mental health treatment upon finding that the conditions of § 33-6-502(1)-(3) have been met.

(c) Before ordering an outpatient treatment plan pursuant to this section, the court shall comply with subsections (d)-(h).

(d)

(1) A person who is authorized to file a complaint under § 33-6-504 may file a petition with a court of competent jurisdiction seeking assisted outpatient mental health treatment under this section for a proposed patient who has threatened violence against the patient's self or other persons. For a petition

under this section, a court may order the patient to receive an involuntary outpatient evaluation in lieu of other evaluations authorized under this chapter.

(2) An involuntary outpatient evaluation may be conducted by a physician or a professional designated under § 33-6-427(a) or (b). The evaluation shall include involvement or consultation with the agency or facility that will provide monitoring or services under the proposed less restrictive alternative treatment order. If the petition is for an involuntary outpatient evaluation and the person is being held in a hospital emergency department, the person may be released once the hospital has satisfied federal and state requirements for appropriate screening and stabilization of patients.

(e)

(1) A proposed outpatient treatment plan, developed pursuant to this section by a physician or a professional designated under § 33-6-427(a) or (b) who has examined the proposed patient no more than ten (10) days prior to the entering of an order pursuant to this part, shall be presented to the court in writing. The plan shall include all services the examining physician or a professional designated under § 33-6-427(a) or (b) recommends that the proposed patient receive, and for each such recommended service, identify an appropriate community-based provider that has agreed to provide it.

(2) If the proposed outpatient treatment plan includes counseling and treatment to address acts of violence or threats of violence, it may include a provision requiring relevant testing; provided, that the clinical basis of the physician or a professional designated under § 33-6-427(a) or (b) for recommending such plan provides sufficient facts for the court to find:

(A) That such person has a history of violent acts or threats of violence against the person or others that is clinically related to the mental illness; and

(B) That such testing is necessary to prevent a relapse or deterioration that would be likely to result in serious harm to the person or others.

(3) The examining physician or a professional designated under § 33-6-427(a) or (b) shall:

(A) Provide an opportunity to actively participate in the development of the assisted outpatient mental health treatment plan to the proposed patient, the treating physician or a professional designated under § 33-6-427(a) or (b), if any, and, upon the request of the proposed patient, any other individual significant to the proposed patient; and

(B) Make reasonable efforts to gather information that may be relevant in the development of the treatment plan from the proposed patient's family or significant others.

(f) At all stages of a proceeding commenced under this section, the proposed patient shall have the right to be represented by counsel. If neither the patient nor others provide counsel, the court shall appoint counsel for the proposed patient. Upon request of the proposed patient, the court shall order an independent examination by a physician or a professional designated under § 33-6-427(a) or (b) only when retained by the proposed patient.

(g)

(1) Upon receipt of a petition for which assisted outpatient mental health treatment may be an option, the court shall fix the date for a hearing. Such date shall be no later than ten (10) days from the date such petition is received by the

court excluding Saturdays, Sundays, and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination of the proposed patient and the potential need to provide assisted outpatient mental health treatment expeditiously. The court shall cause the proposed patient, any other person to whom notice is due under this chapter, the petitioner, the physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and, if it is deemed advisable and the proposed patient is available, examine the proposed patient in or out of court. If the proposed patient does not appear at the hearing, and appropriate attempts to elicit the attendance of the proposed patient have failed, the court may conduct the hearing in the proposed patient's absence. In such case, the court shall set forth the factual basis for such determination.

(2) If the affidavit or affirmation of the physician or a professional designated under § 33-6-427(a) or (b) accompanying the petition indicates that the proposed patient has not submitted to an examination in the ten (10) days prior to the filing of the petition, the court may request the proposed patient to submit to an examination by a physician or a professional designated under § 33-6-427(a) or (b) appointed by the court. If the proposed patient does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement officers to take the proposed patient into custody in accordance with § 33-6-618 and transport the patient to a hospital for examination by a physician or a professional designated under § 33-6-427(a) or (b). Transportation will be conducted in accordance with parts 4 and

9 of this chapter. The subject may be detained for the period required to complete the examination, but not more than forty-eight (48) hours. The physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition may perform such examination of the proposed patient if the physician or a professional designated under § 33-6-427(a) or (b) is privileged or otherwise authorized by such hospital to do so. If such examination is performed by another physician or a professional designated under § 33-6-427(a) or (b), the examining physician or a professional designated under § 33-6-427(a) or (b) may consult with the physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition as to whether the subject is in need of assisted outpatient mental health treatment. Upon completion of the examination, the subject shall be released and the examining physician or a professional designated under § 33-6-427(a) or (b) shall report the findings of the examination to the court. The court shall not hold a hearing on the petition unless and until the examining physician or a professional designated under § 33-6-427(a) or (b) submits to the court:

(A) An affidavit or affirmation stating that the physician or a professional designated under § 33-6-427(a) or (b) concurs that the proposed patient is in need of assisted outpatient mental health treatment; and

(B) A proposed assisted outpatient mental health treatment plan for the proposed patient, developed by the examining physician or a professional designated under § 33-6-427(a) or (b), and conforming to the requirements of subsection (e).

(3) The court shall not order assisted outpatient mental health treatment unless an examining physician or a professional designated under § 33-6-427(a)

or (b) who has personally examined the proposed patient no more than ten (10) days before the filing of the petition and recommends assisted outpatient mental health treatment, testifies at the hearing. Such physician or a professional designated under § 33-6-427(a) or (b) shall testify to:

(A) The facts and clinical determinations that support the allegations that the proposed patient is in need of assisted outpatient mental health treatment; and

(B) The proposed assisted outpatient mental health treatment plan, the rationale for each component of such plan, and whether each such component is the least restrictive available alternative to serve the clinical needs of the proposed patient; and

(C) A history of medication compliance.

(4) The proposed patient shall be afforded an opportunity to present evidence, to call witnesses on the patient's behalf, and to cross-examine adverse witnesses.

(5) Unless the proposed patient requests a public hearing, the hearing shall be confidential and a report of the proceedings shall not be released to the public or press.

(h)

(1) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the proposed patient is in need of assisted outpatient mental health treatment, the court shall not order outpatient treatment under this section and shall order inpatient care and treatment under § 33-6-502 or make other dispositions as authorized by law.

(2) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the proposed patient is in need of assisted outpatient

mental health treatment, the court may order the proposed patient to receive assisted outpatient mental health treatment for an initial period not to exceed six (6) months. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the ordered treatment is the least restrictive alternative treatment appropriate and feasible for the proposed patient, and that community resources and a willing treatment provider are available to support such treatment. The order shall state an assisted outpatient mental health treatment plan, which shall include all categories of assisted outpatient mental health treatment that the proposed patient is to receive, but shall not include any such category that has not been recommended in both the proposed written treatment plan and the testimony provided to the court.

(3) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the proposed patient is in need of assisted outpatient mental health treatment and that the treatment recommended by the examining physician or a professional designated under § 33-6-427(a) or (b) is in whole or in part appropriate, but the court does not find by clear and convincing evidence that community resources and a willing treatment provider are available to provide such treatment, the court shall state such findings of fact on the record and deny assisted outpatient mental health treatment without prejudice and may order such other treatment or commitment as authorized by law.

(4) An order for less restrictive alternative treatment under this section must identify the services the person will receive. The court may order additional evaluation of the person if necessary to identify appropriate services.

(5) The petitioner shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile, or electronic means,

upon the assisted outpatient and all service providers identified in the treatment plan.

(i) In addition to any other right or remedy available by law with respect to the order for assisted outpatient mental health treatment, either party to the order may apply to the court, on notice to the other party and all others entitled to notice, to stay, vacate, or modify the order.

(j) Subject to available funding resources, treatment resources, as defined in § 33-1-101, shall provide services to a person in need of assisted outpatient mental health treatment who is subject to a less restrictive alternative treatment order under this section when:

(1) The person is enrolled in medical assistance under title 71, chapter 5;

or

(2) The person is not enrolled in medical assistance under title 71, chapter 5, and does not have other insurance that can pay for the services, but treatment resources have identified adequate available resources to provide the services.

(k) Less restrictive alternative treatment may include the following services as approved by the court:

(1) Assignment of a care coordinator;

(2) An intake evaluation with the provider of the less restrictive alternative treatment;

(3) A psychiatric evaluation;

(4) Medication management;

(5) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;

(6) A transition plan addressing access to continued services at the expiration of the order;

(7) An individual crisis plan;

(8) Psychotherapy;

(9) Nursing; and

(10) Substance abuse counseling.

(l) The treatment provider may modify the treatment plan according to the treatment needs of the assisted outpatient and provide notice to the court and petitioner.

(m) Within thirty (30) days prior to the expiration of an order for assisted outpatient mental health treatment, the original applicant, if the petitioner retains the status of an authorized petitioner pursuant to this chapter, or, in the absence of a timely petition by the original petitioner, any other person authorized to petition pursuant to this chapter, may apply to the court to order continued assisted outpatient mental health treatment and the court may order continued assisted outpatient mental health treatment for a period not to exceed six (6) months from the expiration date of the current order if the court finds by clear and convincing evidence that the assisted outpatient mental health treatment continues to meet the criteria in this section. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect for up to an additional thirty (30) days without further action of the court. If the court's disposition of such petition does not occur within thirty (30) days after the expiration date of the current order, the order for assisted outpatient mental health treatment shall terminate. The procedures for obtaining any order pursuant to this subsection (m) shall be in accordance with this section.

(n) Section 33-6-607 shall apply to the costs incurred for services ordered under this section.

(o) An assisted outpatient's substantial failure to comply with the order of the court shall constitute reason for a physician or a professional designated under § 33-6-427(a) or (b) to determine whether the assisted outpatient is subject to emergency detention under § 33-6-401 and shall give rise to the authority under § 33-6-402 for such physician or a professional designated under § 33-6-427(a) or (b) to take custody of the assisted outpatient. Failure to comply with an order of assisted outpatient mental health treatment shall not be grounds for a finding of contempt of court or for non-emergency involuntary detention under this title. Nothing in this section precludes the use of detention by law enforcement officers under § 33-6-402.

(p) The commissioner of mental health and substance abuse services is authorized to promulgate rules to implement this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2019, the public welfare requiring it.